


**Fleming Computer 05 FHL 150**

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**From:** <damian\_capozzola@la.kirkland.com>  
**To:** <lex@gte.net>  
**Cc:** <peter\_spingola@chicago.kirkland.com>; <bchrist@email.fleming.com>;  
<cbirche@email.fleming.com>; <rkampfner@whitecase.com>; "Mark Dillon" <markd@fleming-logistics.com>  
**Sent:** Monday, May 12, 2003 9:34 AM  
**Subject:** Re: Freight Software



I certainly have no intention of sharing anything with Hogan or Berry, at least not at this point and not without due consideration by all involved and/or a court order to do otherwise.

--Damian

lex@gte.net on 05/12/2003 12:04:08 PM

To: Damian Capozzola/Los Angeles/Kirkland-Ellis@K&E,  
Peter Spingola/Chicago/Kirkland-Ellis@K&E,  
bchrist@email.fleming.com,  
cbirche@email.fleming.com,  
rkampfner@whitecase.com  
cc: "Mark Dillon" <markd@fleming-logistics.com>

Subject: Re: Freight Software

You have to be careful of these requests for "the software."

Hogan's/Berry's definition of "the software" includes all of Fleming's data of all of Fleming Hawaii's purchases for the past four years.

Apparently with Microsoft Access there's no way to easily separate the "program" from the data.

Hogan and Berry desperately want that data in order to harass Fleming and its vendors.

In the copyright litigation here in Hawaii, we (1) refused to provide the data; (2) provided the software with the data stripped out of it; and (3) had a discovery master appointed who had all of the disk drives "imaged" in order to preserve whatever is on them and to rule on any further requests from Berry/Hogan for relevant information. The Master was very helpful in cutting off many intrusive discovery demands. Hogan and Berry hate the master but I would suggest that anything that's provided to these guys should certainly not have the data and you ought to consider proposing to use the same discovery master (who has not been paid Fleming's share of his fees -- approximately \$3,000).

----- Original Message -----

From: <damian\_capozzola@la.kirkland.com>

To: <peter\_spingola@chicago.kirkland.com>;

<lex@gte.net>;

<bchrist@email.fleming.com>;

<cbirche@email.fleming.com>;

<rkampfner@whitecase.com>

Sent: Monday, May 12, 2003 7:39 AM

Subject: Freight Software

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>

> FYI, received this today. I don't intend to respond.

> At this point, everything he's doing is designed to set

> us up.

>

> I do have the electronic version of the system, which I

> received today from one of Brian's guys.

>

> --Damian

>

> ----- Forwarded by Damian

> Capozzola/Los Angeles/Kirkland-Ellis on 05/12/2003

> 10:44 AM -----

>  
>  
> [hogant001@hawaii.rr.com](mailto:hogant001@hawaii.rr.com) on 05/12/2003 10:41:31 AM  
>  
> To: Damian Capozzola/Los Angeles/Kirkland-Ellis@K&E  
> cc:  
>  
> Subject: Freight Software  
>  
>  
>  
> Dear Capozzola:

>  
> I would appreciate a response to my request that the  
> Debtor-in-Possession  
> agree to turn over a copy of the version of the  
Berry  
> Freight Control  
> System it is presently using.

>  
> Tim Hogan  
>  
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